

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN MCGILL, Intervening Plaintiff,

Plaintiff(s),

-against-

VERIFIED ANSWER to
Intervening Plaintiff, McGill's
Complaint
Index No.: 07 CIV 8083 (CLB)

JOHN CALACA, DANIEL FLANICK, JAMES DETCH,
and TOWN OF CRAWFORD,

Defendant(s).

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Defendant, JOHN CALACA, by his attorneys LAW OFFICES OF BERNARD D.

BRADY answering the Intervening Plaintiff's Verified Complaint:

PARTIES

1. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the paragraph of the Verified Complaint designated "1" and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

2. Denies each and every allegation contained in the paragraph of the Verified Complaint marked and designated as "2," except admits, upon information and belief, that John Calaca was the Town of Crawford Building Inspector between September 13, 2005, and January 4, 2006, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

3. Denies each and every allegation contained in the paragraph of the Verified Complaint marked and designated as "3," except admits, upon information and belief, that

DANIEL FLANICK was a member of the Town Board of the Town of Crawford between September 13, 2005, and January 4, 2006, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

4. Denies each and every allegation contained in the paragraph of the Verified Complaint marked and designated as **“4,”** except admits, upon information and belief, that JAMES DETCH was a member of the Police Advisory Board of the Town of Crawford between September 13, 2005, and January 4, 2006, and respectfully refers all questions of law to the court and all question of fact to the trier of fact.

5. Denies any each and every allegation contained in the paragraphs of the Verified Complaint marked and designated **“5” and “7”** insofar as the allegations pertain or relate to this answering defendant and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

6. Denies each and every allegation contained in the paragraph of the Verified Complaint marked and designated **“6”** insofar as the allegations pertain or relate to this answering defendant and begs leave to refer to same at the time of trial and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

JURISDICTION AND VENUE

7. Denies each and every allegation contained in the paragraphs of the Verified Complaint marked and designated **“8”** insofar as the allegations pertain or relate to this answering defendant and begs leave to refer to same at the time of trial and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

FACTS AND CLAIMS FOR RELIEF

8. Denies any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the paragraphs of the Verified Complaint designated “9”, “10”, “12”, “13”, “14”, and “15”.

9. Denies each and every allegation contained in the paragraph of the Verified Complaint designated “11”, “16”, “17”, “18”, “21”, “23” and “31” insofar as the allegations pertain or relate to this answering defendant and begs leave to refer to same at the time of trial and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

10. Denies each and every allegation contained in the paragraphs of the Verified Complaint marked and designated “19”, “20”, “22”, “24 (i-iii)”, “25”, “26”, “27”, “28”, “29”, “30”, “32”, “33”, “34”, and “35”.

CAUSES OF ACTION

11. As paragraph number “36”, this answering defendant repeats, reiterates, and realleges each and every denial of the allegations contained in the paragraphs of the Verified Complaint designated “1” through “35” as if said denials were more fully and specifically set forth herein.

12. Denies each and every allegation contained in paragraphs of the Verified Complaint marked and designated “37”, “38”, and “39” and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

**AS AND FOR A FIRST SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

13. Defendant is entitled to qualified immunity.

**AS AND FOR A SECOND SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

14. Plaintiff fails to state a viable constitutional claim under the First Amendment as a matter of law.

**AS AND FOR A THIRD SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

15. Plaintiff fails to state a viable constitutional claim under the Fourteenth Amendment as a matter of law.

**AS AND FOR A FOURTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

16. Defendant never failed to issue a certificate of occupancy in connection with plaintiff's dog training business.

**AS AND FOR A FIFTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

17. Punitive damages are not assessable against the defendant as a matter of law.

**AS AND FOR A SIXTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

18. Plaintiff voluntarily, and without duress, sent a letter to the Town of Crawford Justice Court for the dismissal of the disorderly conduct charge against Claude Babcock.

**AS AND FOR A SEVENTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

19. The factual findings and legal conclusions contained within Judge Alfieri's Decision and Order in People v. John Calaca and Daniel Flanick, (N.Y. County Court, Orange County Indictment No. 2007-177), which dismissed all of the alleged criminal charges, serve to collaterally estop the plaintiff's First and Fourteenth Amendment claims, as a matter of law.

**AS AND FOR A EIGHTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

20. Plaintiff did not suffer any actual damages as a result of defendant's conduct.

**AS AND FOR A NINTH SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE**

21. Plaintiff's lawsuit should now be deemed frivolous under F.R.C.P. Rule 11.

**AS AND FOR A CROSS-CLAIM AGAINST DEFENDANT TOWN
OF CRAWFORD PURSUANT TO FRCP RULE 13**

22. Pursuant to Chapter 14 of the Code of the TOWN OF CRAWFORD, the TOWN OF CRAWFORD is required to indemnify and hold harmless its employees, which include volunteers expressly authorized to participate in a publicly sponsored volunteer program or any other person holding a position by election, appointment, or employment in the service of the TOWN OF CRAWFORD whether or not compensated, from any judgment, reasonable attorney's fees and litigation expenses arising out of the employee's position with the TOWN OF CRAWFORD.

23. Despite due demand, defendant TOWN OF CRAWFORD has not agreed to indemnify and hold defendant, JOHN CALACA, harmless from any judgment entered in this action and from any attorney's fees and litigation expenses incurred in this action.

24. Based on the foregoing, pursuant to Chapter 14 of the Code of the TOWN OF CRAWFORD, defendant JOHN CALACA demands that the TOWN OF CRAWFORD indemnify and hold him harmless from any judgment entered in this action and from any attorney's fees and litigation expenses incurred in this action.

WHEREFORE, Defendant JOHN CALACA demands judgment:

1. dismissing the Verified Complaint;

2. Apportioning liability between all parties;
3. Granting the cross-claim requiring defendant TOWN OF CRAWFORD to indemnify and hold him harmless from any judgment entered in this action and from any attorney's fees and litigation expenses incurred in this action; and
4. Awarding attorneys' fees, costs and disbursements of this action.

Dated: Goshen, New York
June 2, 2008

Yours, etc.

LAW OFFICES OF BERNARD D. BRADY

By: S/ Damian J. Brady

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN MCGILL, Intervening Plaintiff,

Plaintiff(s),

VERIFICATION

Index No.: 07 CIV 8083 (CLB)

-against-

JOHN CALACA, DANIEL FLANICK, JAMES DETCH,
and TOWN OF CRAWFORD,

Defendant(s).

-----X

STATE OF NEW YORK)

) ss:

COUNTY OF ORANGE)

JOHN CALACA, being duly sworn, deposes and says:

That he is one of defendants herein and that he has read the foregoing Verified Answer and knows the contents thereof and that it is true to his personal knowledge or upon information and belief.

S/John Calaca

JOHN CALACA

Sworn to before me on June 2, 2008

S/Damian J. Brady

Notary Public, State of New York

No. 02BR6090013

Qualified in Orange County

Expires March 31, 2011